

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

) **CASE NO. 1:17-MD-2804**
)
) **JUDGE DAN A. POLSTER**
)
) **UNITED STATES OF AMERICA’S**
) **BRIEF IN RESPONSE TO**
) **PLAINTIFFS’ MOTION TO MODIFY**
) **PROTECTIVE ORDER RE: DEA’S**
) **ARCOS/DADS DATABASE**
)
)
)

Now comes the United States of America, on behalf of the U.S. Department of Justice (“DOJ”) and the U.S. Drug Enforcement Administration (“DEA”) (collectively “United States”) and hereby responds to Plaintiffs’ Motion for Modify Protective Order re: DEA’s ARCOS/DADS Database. (ECF No. 1447 PageID # 39822). The United States also submits this brief in response to Certain Defendants’ Opposition to Plaintiffs’ Motion to Modify Protective Order re: DEA’s ARCOS/DADS Database. (ECF No. 1488 PageID # 42905).¹ As discussed more fully below, the United States does not oppose the majority of the modifications to the protective order proposed by Plaintiffs and Defendants in their respective motions, and it will abide by whichever proposal the Court accepts. However, the United States respectfully requests that certain edits be

¹ Immediately prior to filing this Brief, the United States became aware of unfiled letters to the Court by non-party litigants proposing additional changes to Court’s Protective Order. Neither counsel nor DEA have had an opportunity to review the proposed changes. If the Court intends to consider the unfiled proposals, the United States would respectfully request the opportunity to review and respond to the additional changes prior to being adopted by the Court.

made to whichever parties' proposal the Court accepts. Those proposed edits are attached hereto as Government Exhibit 1 and Government Exhibit 2.

1. Plaintiffs' Proposed Second Order Amending Protective Order Re: DEA ARCOS/DADS Database

After reviewing Plaintiffs' Proposed Second Order Amending Protective Order as filed initially, the United States was concerned that the order would allow sharing of ARCOS data with non-party private entities (hospitals) who did not have any law enforcement function. In the Hospital Plaintiffs' Brief in Support of Plaintiffs' Motion (ECF No. 1455), the Hospital Plaintiffs have clarified that they "request for this Honorable Court to Order the sharing of ARCOS information with Hospital Plaintiffs. (Id. at PageID # 41679 (emphasis added).) They argue that "access to the data affords the Hospitals with the same evidence to which all other parties have access" and that the "Hospital Plaintiffs have already agreed to be bound" by the protective order. Most importantly, the Hospital Plaintiffs represent that "the ARCOS data sought is for explicit use in this [MDL] litigation...." (Id. at PageID # 41681.) Based on these clarifications and representation from the Hospital Plaintiffs, the United States does not object to granting access of the ARCOS or SORS data to Plaintiff Hospitals who are parties to the MDL and who have signed the protective order for use in this litigation only. However, to further clarify that the ARCOS and SORS information is only going to hospitals who are parties to litigation in the MDL solely for use in this litigation, and to draw a distinction between party and non-party hospitals, the United States proposes certain minor edits to the Proposed Second Order Amending Protective Order re DEA ARCOS/DADS Database. A redline of those proposed edits is attached hereto as Government Exhibit 1.

2. Certain Defendants' Proposed Consolidated Amended Protective Order re: ARCOS Data

The United States has also reviewed Defendants' Proposed Consolidated Amended Protective Order Re: ARCOS Data (ECF No. 1488-1 PageID # 42912). The United States does not object to the more stringent enforcement provisions in the protective order that Defendants have proposed. However, the United States respectfully requests certain edits to: (1) clarify that the Order applies to both ARCOS and SORs information produced in the MDL, (2) clarify that information can only be shared with hospitals who are parties in the MDL, (3) to add additional time for the United States to review and respond to requests to release information, and (4) to defer certain issues until the 6th Circuit rules on appeal of this Court's order prohibiting the parties to disclose ARCOS information in response to state public record requests for access to such information. A redline of these proposed edits is attached hereto as Government Exhibit 2.

Respectfully submitted,

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Acting Under Authority Conferred by 28 USC § 515

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CERTIFICATE OF SERVICE

I certify that, on April 5, 2019, I filed a copy of the foregoing Brief in Response electronically. The Court's electronic filing system will send notice of this filing to all parties. Parties may access this filing through the Court's system.

/s/ James R. Bennett II

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